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No. 90-738

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

JOSEPH E. and JEANETTE SCHNORBUS,
RICHARD L. and GLADYS M. BENNER,
CHARLES and NORA H. FRANKS, and
SAM WHITE
Petitioners,

vs.

DIRECTOR OF REVENUE, STATE OF MISSOURI,
Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of the State of Missouri

RESPONDENT'S BRIEF IN OPPOSITION

DUANE BENTON
Counsel of Record
Director of Revenue
P.O. Box 311
Jefferson City, MO 65105-0311
(314) 751-4450

WILLIAM L. WEBSTER
Attorney General
P.O. Box 899
Jefferson City, MO 65102
(314) 751-8826

Attorneys for Respondent

Of Counsel:

ELIZABETH HEALEY
General Counsel

GEORGE COX
Senior Counsel
Missouri Department
of Revenue
P.O. Box 475
Jefferson City, MO 65105
(314) 751-2633

St. Louis Law Printing, Inc. 13307 Manchester Rd. St. Louis, MO 63131 314-231-4477

QUESTIONS PRESENTED

1. Whether the Missouri Supreme Court properly found that the State had a rational basis for exempting governmental retirement benefits while taxing nongovernmental retirement benefits?

2. Whether the Missouri Supreme Court properly found that the State had a legitimate interest in attracting and retaining government employees which justified the classifications of governmental retirees, versus nongovernmental retirees?

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Authorities	iv
Statement of the Case	1
Reasons for Denying the Writ	3
Conclusion	6

TABLE OF AUTHORITIES

	Page
Cases:	
Clark v. United States, 691 F.2d 837 (7th Cir. 1982)	4
Davis v. Michigan Department of Treasury, __ U.S. __, 109 S.Ct. 1500 (1989)	1,2,4
Eisenstadt v. Baird, 405 U.S. 438 (1972)	3,5
Exxon Corp. v. Eagerton, 462 U.S. 176 (1983)	3
Hackman v. Director of Revenue, 771 S.W.2d 77 (Mo. banc 1989), *cert. denied*, ___ U.S. ___, 110 S.Ct. 718 (1990)	2
Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356 (1973)	3
Constitutional Provisions:	
U.S. Const. Amend. XIV	3
Mo. Const. art. X, § 3	5
Statute:	
4 U.S.C. § 111	2,4

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The Director of Revenue, State of Missouri, submits this Brief in Opposition to the Petition for Certiorari filed by Joseph E. and Jeanette Schnorbus, et al. Respondent submits that Petitioners fail to raise a substantial federal question, and as the second question presented is predicated wholly upon state law grounds, it occasions no basis for review by this Court.

STATEMENT OF THE CASE

Petitioners claim this case arises as a result of this Court's decision in *Davis v. Michigan Department of Treasury*, ___ U.S. ___, 109 S.Ct.

1500 (1989). In *Davis*, this Court held that Michigan's taxation of annuities of retired referral employees (while exempting state and municipal retirees) violated 4 U.S.C. § 111 as well as the intergovernmental tax immunity doctrine embodied in the Supremacy Clause.

Like Michigan, Missouri gave a preference to state and local annuitants at the expense of federal annuitants. In *Hackman v. Director of Revenue*, 771 S.W.2d 77 (Mo. banc 1989), *cert. denied*, ___ U.S. ___, 110 S.Ct. 718 (1990), the Missouri Supreme Court followed the decision in *Davis*, ordering refunds to be paid to those eligible under Missouri's income tax refund statute.

Pursuant to § 143.801, RSMo 1986, these Petitioners filed claims for refund with the Respondent, asserting that Missouri unfairly discriminated between state-and-federal-government pensions and private pensions, wherein the latter was taxed and the former exempted (either by state statute or court decision). On June 29, 1989, the Director denied the refund claims (Petitioners' Appendix H). Pursuant to statute, the denials were protested (Petitioners' Appendix G). On June 29, 1989, the Director denied the protests (Petitioners' Appendix F) and the Petitioners appealed to the Missouri Administrative Hearing Commission on July 14, 1989 (Petitioners' Appendix D). Acting on a stipulated record (Petitioners' Appendix E), the Administrative Hearing Commission ruled for Respondent on September 7, 1989 (Petitioners' Appendix C). On June 19, 1990, the Missouri Supreme Court affirmed the decision of the Administrative Hearing Commission, denying the refunds, 790 S.W.2d 241 (Mo. banc 1990).

REASONS FOR DENYING THE WRIT

I.

Petitioners first argue that the denial of these refunds is a violation of the Equal Protection Clause of the United States Constitution, Amendment XIV.[1] In *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983), this Court noted that the standard of review for equal protection claims made under the United States Constitution is the "lenient standard of rationality that this Court has traditionally applied to considering equal protection challenges to regulation of economic and commercial matters." 462 U.S. at 195-6.

In *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973), this Court stated:

> The Equal Protection Clause does not mean that a State may not draw lines that treat one class of individuals or entities differently from the others. The test is whether the difference in treatment is an invidious discrimination. *Harper v. Virginia Board of Elections*, 383 U.S. 663, 666. Where taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.

410 U.S. at 359 (footnote omitted).

After reciting this standard of review, the Missouri Supreme Court held in the case below:

> This case is similar to *Streight v. Ragland*, 280 Ark. 206, 655 S.W.2d 459 (1983), where the Arkansas Supreme Court held there was a rational basis for excluding federal and state pensions but not private pensions from state taxation. The court found that

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[1] Petitioners also assert that the decision of the Missouri Supreme Court violates the Equal Protection Clause of the Missouri Constitution. This, of course, is not reviewable by this Court. *Eisenstadt v. Baird*, 405 U.S. 438, 442 (1972).

> the legislature may have wanted to encourage pensioners to either remain in Arkansas or relocate to Arkansas. *Id.* 655 S.W.2d at 464. Here, the Missouri General Assembly may have desired to create an additional benefit for potential employees to be attracted to governmental service in Missouri or for government employees to remain in Missouri after their retirement. Additionally, the Director of Revenue showed by affidavit that the cost to the state of exempting private pensions would be over 68 million dollars per year and thus demonstrated an economic basis not to exempt nongovernmental employees' retirement benefits. Regardless of the actual justification for the statute, there is a rational basis for the implementation of exemption of governmental retirement benefits, and the state has a legitimate interest in giving an exemption to former governmental employees.

790 S.W.2d at 243.

The Missouri Supreme Court's decision is also consistent with the Seventh Circuit Court of Appeals' decision in *Clark v. United States*, 691 F.2d 837 (7th Cir. 1982). The *Clark* court held that 5 U.S.C. § 8340 did not violate equal protection by mandating cost of living adjustments for federal, but not state or private, pensioners.

Respondent submits that the decision of the Missouri Supreme Court was correct. Indeed, this Court noted in *Davis*, *supra*, that Michigan's scheme of discrimination in favor of state retirees over federal retirees did have a rational basis, but under the stricter standard established by 4 U.S.C. § 111, that rational basis was not sufficient to save the Michigan scheme, 109 S.Ct. at 1508. Petitioners' statement that this Court could not find a rational basis for Michigan's scheme (Petition pp. 15-16) is simply incorrect. As this Court held, 4 U.S.C. § 111 required Michigan to meet a stricter standard than mere rational basis. This same federal statute is not implicated by this case.

The Missouri Legislature could rationally believe that permitting the exemption of government pension benefits would serve as an incentive to enter into and remain employed in government service a laudable and permissible goal of the Missouri Legislature. The

legislature could also reasonably believe that exempting government pensions was a fringe benefit designed to offset compensation lower than that available in the private sector.

Accordingly, Respondent submits that the Missouri Supreme Court correctly found that there was a rational basis for Missouri's practice of exempting certain government pensions and imposing a tax on certain private pensions. No invidious discrimination exists, and this issue does not merit review by this Court.

II.

Petitioners also suggest that this Court should review that portion of the Missouri Supreme Court's decision that construes article X, section 3 of the Missouri Constitution. Clearly, an interpretation of the Missouri Constitution by the Missouri Supreme Court is binding upon this Court and does not present a subject for review by this Court, *Eisenstadt v. Baird*, 405 U.S. 438, 442 (1972). Respondent notes that the Missouri Supreme Court specifically rejected this argument, 790 S.W.2d at 242.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari to the Supreme Court of the State of Missouri should be denied.

Respectfully submitted,

DUANE BENTON
Counsel of Record
Director of Revenue
P.O. Box 311
Jefferson City, MO 65105-0311
(314) 751-4450

WILLIAM L. WEBSTER
Attorney General
P.O. Box 899
Jefferson City, MO 65102
(314) 751-8826

Attorneys for Respondent

Of Counsel:

ELIZABETH HEALEY
General Counsel

GEORGE COX
Senior Counsel
Missouri Department
of Revenue
P.O. Box 475
Jefferson City, MO 65105
(314) 751-2633

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